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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 977

MITSUBISHI INTERNATIONAL CORPORATION,

Petitioner,

against

STEAMSHIP *"PALMETTO STATE"* and STATES MARINE CORPORATION OF DELAWARE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

MITSUBISHI INTERNATIONAL CORPORATION,
Petitioner,

By F. HERBERT PREM,
Attorney for Petitioner.

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STEAMSHIP "*Palmetto State*" and STATES MARINE CORPORATION OF DELAWARE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Petitioner prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Second Circuit.

Opinions Below.

The opinion of the United States Court of Appeals for the Second Circuit (R. Vol. II, p. 1) is reported at 311 F. (2d) 382; the denial of the petition for rehearing by the Court of Appeals (R. Vol. II, p. 17) is not officially reported. The opinion of the United States District Court for the Southern District of New York (R., Vol. I, p. 79) is not officially reported.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. Code, Sec. 1254(1).

The grounds on which the jurisdiction of this Court is invoked are that the Court of Appeals (a) has decided an important question of federal law which has not been, but should be, decided by this Court; and (b) has disregarded the decisions of this Court prescribing the rule for the interpretation of statutory terms, substituting therefor a novel rule.

The date of the judgment of the Court of Appeals for the Second Circuit sought to be reviewed and the date of its entry is December 4, 1962 (R., Vol. II, pp. 7, 8). Petitioner's petition for rehearing was denied on January 16, 1963, and an order thereon was entered on the same date (R., Vol. II, pp. 17, 18).

Questions Presented.

1. Is a carefully engineered oak timbered, steel bolted structure, 16 feet long, 6 feet high and 5 feet wide containing a 32½ ton steel roll intended to roll cold steel products, a "package" within the meaning of Section 4(5) of the U. S. Carriage of Goods by Sea Act (46 U. S. Code, Sec. 1304(5)).

2. Has not the decision of the Court of Appeals holding such a structure to be a "package", disregarded the decisions of this Court prescribing canons of construction for determining the meaning of words contained in a federal statute, and thus decided a federal question in conflict with applicable decisions of this Court.

3. Is not the decision of the Court of Appeals characterizing as a "package" a steel roll of such unusual weight and dimensions, in conflict with the decisions of this Court that statutes should be construed so as not to bring about unreasonable and absurd results.

Statute Involved.

The statutory provision involved in this suit is:

Section 4(5) of the U. S. Carriage of Goods by Sea Act (46 U. S. Code, Section 1304(5)), which provides:

> "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

Statement.

This is an action in admiralty to recover from an ocean carrier for cargo damage. The District Court had jurisdiction under 28 U. S. Code, Sec. 1333 (1).

On October 21, 1958, at the port of New York, petitioner delivered to respondent, three boxed steel rolling mill rolls, intended for use in a Japanese steel mill, for carriage on respondent's vessel "Palmetto State", to Kobe, Japan. Each roll weighed 32½ tons, the dimensions of the box being 16 ft. long, 6 ft. high, and 5 ft. wide. The rolls being "heavy lift" cargo which the ship's loading gear was

incapable of handling, respondent employed a floating crane which transferred the three rolls from a lighter to the ship's 'tweendeck (R. Vol. I, pp. 79-80). Petitioner was required to pay respondent an extra charge of approximately $4,000 for the use of the lighter and floating crane (R. Vol. I, p. 21).

Despite the combined weight of the three steel rolls—approximately 97 tons—respondent used no chains or steel lashings to secure them in the ship's 'tweendeck, as is customarily done, but relied solely upon pieces of lumber to shore and maintain the rolls in position as protection against the athwartship rolling movement of the ship (R. Vol. I, p. 81). Under wind and sea conditions which the Chief Officer testified were such as the ship might be expected to encounter, the three rolls broke adrift and sustained extensive damage, requiring their return to the mill at Pittsburgh for reconditioning (R. Vol. I, pp. 81-82).

The steel rolls were prepared for shipment at Pittsburgh by the manufacturer. Each roll was secured to a base platform, or skid, constructed of three 8" x 8" oak timbers, 16' in length, with four 3" x 4" spreaders, covered with 2" x 12" spruce flooring. Two 8" x 8" oak timbers lay side by side at each end of the flooring, on top of which was placed a third timber of that size upon which the necks of the rolls rested. The three lower timbers of the cradle were secured by three steel rods which extended through the timbers of the base platform flooring where they were anchored by nuts and steel plate washers. The upper section of the cradle was made by an 8" x 8" oak timber intended to accommodate the roll in its form. This timber was secured by two steel saddle rods which extended from the top of the timber through the three lower members and flooring, where they were anchored by nuts and steel plate

washers. There were also two 8" x 8" oak timbers which were placed in a fore and aft position between the shoulder of the roll and the lower timbers of the cradles intended to resist end thrust movement (R. Vol. I, p. 80).

The outer casing of the rolls was designed to protect them from the elements and possible scratching of their highly polished surfaces (R. Vol. I, p. 31). The frame work of the outer boxes for the rolls was made of 3" x 4" studding, the corners being braced with 2" x 8" diagonal spruce braces. The timbers were secured on top with a double 2" x 4" plate; the roof was supported by double 2" x 4" boards, spaced at intervals. The assembly was then covered by waterproof paper and finally by 2" x 12" spruce lumber (R. Vol. I, p. 80).

A total of thirteen 8" x 8" oak timbers and fourteen steel rods were used in the construction of the cradles and base platform of each roll, the details being shown on petitioner's Exhibit 11 (R., Vol. I, p. 36).

While the District Court held that the damage was attributable to respondent's negligence in failing adequately to secure the heavy rolls in stowage, it limited petitioner's recovery to $500 per roll, a total of $1,500, in respect of its actual loss of $31,000. The District Court concluded that because each 32½ ton roll was enclosed in a wooden sheathing, they were "packages" within the purview of Sec. 4(5) of COGSA (46 U. S. Code, Sec. 1304(5) (R., Vol. I, pp. 82-84).

The Court of Appeals affirmed the judgment of the District Court, ruling that:

> "• • • an article completely enclosed in a wooden box prepared for shipment is a 'package' within Section 4(5) of COGSA, regardless of the size and weight of the package" (R., Vol. II, p. 6).

Reasons for Granting the Writ.

A.

The question presented is of vital importance to shippers of cargo who suffer losses through negligence of ocean carriers. Here, although the petitioner suffered a loss of $31,000 as a result of the respondent's negligence, the courts below have held that it can recover but $1500. There is a great volume of heavy-lift cargo being transported in foreign commerce.

B.

There is a conflict between the various judges of the Court of Appeals for the Second Circuit on the question presented so that determination of the question depends on the personnel of the panel of the Court of Appeals judges who may sit in any particular case.

In *Gulf Italia Company* v. *The Exiria,* 160 F. Supp. 956 (S. D. N. Y.), affirmed *sub nom, Gulf Italia Co. v. American Export Lines, Inc.,* 263 F. (2d) 135 (2 Cir., 1959), a semi-boxed tractor weighing 43,319 pounds became damaged as the result of an ocean carrier's negligence. (In the present case each boxed steel roll weighed approximately 66,000 pounds.) In holding that the semi-boxed tractor was not a "package" within the meaning of the Carriage of Goods by Sea Act, the District Court said (160 F. Supp. 956, at p. 959):

> "Here, the item damaged would not be considered a 'package' under any ordinary construction of the term. A large tractor, weighing 43,319 pounds, is not within the purview of the layman's view of a 'package'. The respondent herein certainly was well aware of the nature and value of the tractor. Under these circumstances I cannot believe that Congress intended the carrier to be able to limit its

liability for its own negligence to a pittance of only $500."

In discussing the question of whether fully enclosing such a piece of cargo with a wooden cover is a material factor in determining the "package" issue, the District Court said (pp. 959-960):

> "However, I do not believe that the mere fact that an item is in some way prepared for shipment will thereby effect the result of making that item, as so prepared, a package within the meaning of the Carriage of Goods by Sea Act. To adopt such a construction it would have to be said that a shipper who attempts to minimize possible harm to his property by putting protective covering on sensitive parts, would be in a worse position than a shipper who cavalierly makes no effort to reduce the possibility of loss not only to himself but to the carrier. Such result would hardly foster good commercial practices."

The Court of Appeals for the Second Circuit, in affirming the decision, said (263 F. (2d) 135, at p. 137) (1959):

> "Section 4(5) of the Act divides 'the transportation of goods' into two categories: 'packages' and 'goods not shipped in packages'. Plainly the tractor was not shipped *in* a package, unless the covering of certain portions of it make it a 'package' within the meaning of the Act. Apparently the appellant contends that any preparation of goods for ocean transportation converts the goods into a 'package'. Such a construction of the section would cause 'a shipper who attempts to minimize possible harm to his property by putting protective covering on sensitive parts,' to be placed in a worse position than a shipper who makes no effort to reduce the possibility of loss from inclement weather or pilfering. We agree with

> Judge Cashin that 'such result would hardly foster good commercial practices.' *Any test dependent upon extent of external covering would lead to uncertainty and increase litigation.* We cannot believe that Congress intended 'package' to be defined in a way to produce such a result. The District Court was correct in holding that the tractor was not a 'package'." (Italics supplied.)

In *The Exiria* the tractor was not completely covered with the casing as were the steel rolls in the present case. It will be noted, however, that in *The Exiria* the courts did not consider that the extent of the covering was the controlling factor but rather that a tractor of such large size and weight cannot fairly be considered a package under a layman's ordinary construction.

The inconsistent views expressed by the two panels of judges in the Second Circuit, one in *The Exiria* and the other in the present case, suggest that decisions in future cases presenting the "package" question under the Carriage of Goods by Sea Act, will depend on how the Bench is constituted in the respective cases.

C.

The only other courts which have considered the question, have held that a large heavy, fully-boxed machine is not a "package" within the meaning of the Carriage of Goods by Sea Act.

That issue was squarely presented in the case of *S.p.A Fiat v. American Export Line*, which was litigated in the Italian Courts. There a fully boxed lathe was negligently damaged on a voyage from Genoa to New York. The trial court (Superior Court of Genoa), in ruling that a 25 ton boxed lathe was not "within the concept of a package" and that, therefore, the $500 per package limitation of the U. S. Carriage of Goods by Sea Act was inapplicable, said:

> "Accordingly, the packing may not be considered the sole and essential element of the concept of 'package'. In addition to the elements of wrapping and handling, it appears logical that there should be included in the concept of 'package' * * * the elements of the size of the thing carried and of its weight" (R., Vol. I, pp. 54-55).

This decision was affirmed (July 4, 1959) by the Court of Appeals of Genoa (R., Vol. I, p. 68). Both opinions in the *Fiat* case are set out in full in petitioner's appendix; trial court opinion (R., Vol. I, pp. 42-56); appellate court opinion (R., Vol. I, pp. 57-68).

Although the Supreme Court of Cassation of Italy remanded the *Fiat* case to the trial court, that action was not taken because of error in the rulings of the two lower courts that a fully boxed piece of machinery weighing 25 tons, is not a "package" under Sec. 4(5) of the U. S. Carriage of Goods by Sea Act. The case was remanded for the specific purpose of having the trial court reconsider the question of the carrier's liability on the basis of the application of the text of the Brussels Convention, 1924, on Bills of Lading, as applied by Italian law, instead of by the law of the United States construing the provisions of the U. S. Carriage of Goods by Sea Act. (This opinion is printed in full in R., Vol. I, pp. 69-78.)

D.

The courts below declined to apply the rules of construction adopted by this court in numerous decisions that the words of a statute are to be given their usual, natural, plain and commonly understood meaning: that they must not be construed to bring about an unreasonable and absurd result.

As early as 1832, this Court said in *Levy* v. *McCartee*, 6 Pet. 102, 110:

> "The legislature must be presumed to use words in their known and ordinary signification, unless that sense be repelled by the context."

That rule of construction has received continuing support:

> *Maillard* v. *Lawrence,* 16 Howard 250, 261;
> *Crane* v. *Commissioner,* 331 U. S. 1, 6-7, (1946).

In *Addison* v. *Holly Hill Fruit Products Co.,* 322 U. S. 607 (1944), this Court said (at p. 618):

> "After all, legislation when not expressed in technical terms is addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him."

In *United States* v. *Katz,* 271 U. S. 354 (1926), this Court said (at p. 357):

> "All laws are to be given a sensible construction; and a literal application of a statute, which would lead to absurd consequences, should be avoided whenever a reasonable application can be given to it, consistent with the legislative purpose."

See, also:

> *Lynch* v. *Alworth-Stephens Co.,* 267 U. S. 364, 370 (1925);
> *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634 at p. 638 (1876).

In the present case the Court of Appeals deprecated the judgment of the "ordinary man," as the norm by which to ascertain the meaning of the statutory term "package,"

and declined to follow the rule so consistently applied by this Court. The Court of Appeals said (R. Vol. II, pp. 3, 4):

> "• • • the field of admiralty law is not an area in which the layman should venture to tread even if equipped with a Webster's Dictionary or Black's Law Dictionary. Black has defined a package as 'A bundle put up for transportation or commercial handling; a thing in form to become, as such, an article of merchandise or delivery from *hand to hand*'." (Italics supplied) • • •
>
> "But the layman's conception of a 'package' as something carried under the arm from the corner grocery store is of no significance in deciding what is a package as specified in 46 USCA. See 1304 (5)."

The reluctance of the Court of Appeals to subscribe to, and approve, the use of dictionaries in ascertaining definitions of words, is not shared by this Court for in *Crane* v. *Commissioner* (*supra*), Chief Justice Vinson, in writing for the Court in a case in which one of the disputes was as to "the construction to be given the term 'property' ", said (331 U. S. 1 at p. 6):

> "In the first place, the words of statutes • • • should be interpreted where possible in their ordinary, everyday senses. The only relevant definitions of 'property' to be found in the principal standard dictionaries are the two favored by the Commissioner • • •."

This Court's footnote to the above excerpt is as follows:

> "See Webster's New International Dictionary, Unabridged, 2d Ed.; Funk & Wagnall's New Standard Dictionary; Oxford English Dictionary."

There is no evidence that there is any accepted commercial meaning of the term "package". While respondent

contended in the Court of Appeals that "package" should be interpreted in its commercial sense, it offered no proof of the existence of a "commercial package" concept, as distinguished from "package" in its commonly accepted sense. Certainly no evidence is required to support the thesis that the "ordinary man" would not consider that such a ponderous, unwieldy and massive piece of cargo as is presented here, may fairly be described as a "package."

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the Second Circuit, commanding that Court to certify and send to this Court for its review and determination on a date certain to be therein named, a full and complete transcript of the record and all proceedings of the case entitled on its docket No. 27507, "*Mitsubishi International Corporation, Libelant-Appellant*, v. *S.S. 'Palmetto State' and States Marine Corporation of Delaware, Respondent-Appellee*"; and that the said decree of the United States Court of Appeals for the Second Circuit be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Court may seem meet and just.

Dated: New York, N. Y., March 29, 1963.

Respectfully submitted,

MITSUBISHI INTERNATIONAL CORPORATION,
Petitioner,

By F. HERBERT PREM,
Attorney for Petitioner.